

**LAW ENFORCEMENT OFFICER INDEPENDENT REVIEW BOARD
TUESDAY, OCTOBER 5, 2021, 9:00 AM**

**THIS MEETING WAS HELD AS A VIDEO CONFERENCE
PURSUANT TO THE GOVERNOR’S EMERGENCY
PROCLAMATION RELATED TO THE COVID-19
RESPONSE, DATED AUGUST 5, 2021.
MEMBERS OF THE PUBLIC JOINED IN
THE ZOOM WEBINAR MEETING.**

DRAFT MINUTES

I. Call to Order; Public Notice; Roll Call and Quorum Determination.

The meeting was called to order by Board Chair Gary Yabuta.

Present were Board Members: Chair Gary Yabuta, Assistant Chair Barbara Richardson, Lance Goto, Landon Murata, Judge Barbara Takase, and Dr. Bettina Ackermann. John Tam joined late, but before public testimony was solicited. Katy Chen was not present.

II. Public Testimony.

No Public Testimony Provided

III. Approval of Minutes for September 10, 2021 meeting

Landon Murata moved to approve the Open Session minutes for the September 10, 2021 meeting; second by Dr. Bettina Ackermann. Roll call vote taken – all voted in support of approving the minutes. Open Session minutes approved.

Landon Murata moved to approve the Executive Session minutes for the September 10, 2021 meeting; second by Judge Barbara Richardson. Roll call vote taken – all voted in support of approving the minutes. Executive Session minutes approved.

IV. New Business.

A. Finalize Guidelines

The Board discussed the revisions to Paragraphs 1 and 12 as redlined on the October 5, 2021 draft, which was included in the board packet for this meeting. Paragraph 1 clarifies that “law enforcement officer” does not include adult correctional officers. Paragraph 12 deletes the date reference to the prior minutes. If approved today, then the guidelines will be final until such time as the board gives notice and moves to further amend. Landon Murata moved to accept the

October 5, 2021 draft guidelines as the Board's Guidelines. Second by Judge Barbara Takase. Roll call vote taken. Motion unanimously carried. Guidelines approved as final.

B. Report to the Legislature

Chair Gary Yabuta asked the board to think about recommendations to include in its report to the Legislature. The Board discussed the recommendations posted in the Board Packet for the October 5, 2021 meeting.

Recommendation #2:

Chair Yabuta recommended that law enforcement should disclose investigative reports to the Board no later than 60 days after the report is provided to the prosecutor's office. He suggested that law enforcement should be given a time limit.

Lance Goto read the language from Act 161 (2016), which sets out the requirement that the Board submit a report to the legislature for the 2022 session. Mr. Goto suggested that the report start with a brief description of the Board's statutory history, its duties and responsibilities, membership, number of meetings, number of cases reviewed, and recommendations.

Chair Yabuta stated that the report should include how to improve performance if the board continues. The Board has been affected by not getting timely reports and receiving incomplete reports.

The Board discussed a time limit for submitting reports. A delay in receiving reports affects the Board's ability to make a recommendation in a timely and meaningful manner. The reports should be received in a time that allows the law enforcement agency to redact personal identifying information, but such that the Board is able to make a recommendation to the prosecuting agency.

The report should include that the Covid-19 pandemic hindered the Board's ability to review cases.

The Board discussed including in the legislative report the gap between the public perception of what the Board is statutorily obligated to do and what the Board should be doing. It appears that the public believes that beyond recommending whether to prosecute, not prosecute, or request further investigation, the public expects that the Board will comment on police tactics as well as feedback and improvement to police officers. If the latter, the Legislature would need to amend the law. If not, the public needs to be educated. Discussion had about possibly recommending an amendment to section 28-152(a) with a sentence stating that the Board is not tasked with opining on whether the police obeyed their own policies. Dr. Ackermann tasked with drafting this portion.

The Board discussed whether 60 days was a reasonable time for the law enforcement agency to submit the investigative reports. After full discussion, the Board agreed that 30 days was reasonable with any follow up reports provided to the Prosecutor's Office to be simultaneously submitted to the Board.

Recommendation #1:

Chair Yabuta shared that he was concerned about a board member being involved in criminal proceedings. The Board does not have immunity, and the recommendation would allow the board member to be provided legal counsel. Judge Richardson and Dr. Ackermann supported the recommendation.

Lance Goto pointed out HRS section 26-35.5. It appears 28-152(f) is the same as HRS section 26-35.5(b). It is unclear whether this statute applies to federal proceedings. Chair Yabuta asked Lance Goto to research further and provide recommendation at the next meeting.

Recommendation #3:

Chair Yabuta shared that methamphetamine is directly related to a lot of the cases which the Board has reviewed. He is interested in the State conducting a study between methamphetamine use and law enforcement deadly force incidents. The Board has opportunities to review medical examiner data and the toxicology results. A study could be used to address the methamphetamine problem in Hawaii.

Dr. Ackermann queried whether it would be a scientific study to correlate blood level and behavior, or a study on how many law enforcement officer-involved deaths included methamphetamine use and abuse.

Concerns were raised about whether recommendation #3 relates to Board business, and whether using the data would violate the confidentiality of the investigative reports reviewed by the Board. Dr. Ackermann suggested if there was a way to comment anectodally to educate the community and address the problem of methamphetamine use and abuse.

After Board discussion, Chair Yabuta withdrew Recommendation #3, but he committed to pursuing this issue without violating the Board's statutory provisions.

Recommendation #4:

Chair Yabuta recommends a full time coordinator position for the Board. Judge Richardson, Judge Takase, and Dr. Ackermann concur.

- C. Review case submissions
- D. Finalize recommendation letters
- E. Determine next case submissions for review

Judge Richardson moved for the Board to go into executive session pursuant to sections 28-153(g), 92-5(a)(4), and 92-5(a)(8) for the purposes of reviewing cases submitted to the Board, finalizing recommendation letters, and determining the next cases for review. (Items IV.C, D, and E on the agenda.) Second by Landon Murata. Roll call vote taken. Motion carried by unanimous vote. The Board went into executive session.

After returning to open session from executive session, Renee Sonobe Hong shared that she had received an email from Brian Black of the Civil Beat Law Center about the Board's bases for moving into executive session. Ms. Sonobe Hong clarified the reason and statutory citations for why the Board moved into executive session as well as the business had during executive session. HRS section 28-153(g) states that "subject to subsection (h), all matters submitted to the board pursuant to subsection (c) and all proceedings and recommendations of the board shall be confidential". Section 92-5(a)(8) states that a board may go into executive session "to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order." Pursuant to those two sections, the board moved into executive session specifically to discuss case submissions and review investigative reports, in addition to finalizing recommendation letters for cases the board discussed and voted on at the last meeting. The Board also determined the next submissions for review. The Board did not discuss any board guidelines nor did it seek counsel or advice of the Board's attorney, so the Board did not have any matters under HRS section 92-5(a)(4).

At further meetings, specific to each agenda item, the Board should be clear as to what statutory section the Board relies upon when moving into executive session.

Finally, Mr. Black shared two comments about recommendations the Board may consider in its legislative report and those comments have been forwarded to the board. The first comment was about making the board permanent, and the second commented on autopsy and toxicology reports. Both emails have been forwarded to the Board.

Chair Yabuta entertained discussion on adding a recommendation to make this Board permanent after the sunset date of June 30, 2022. Landon Murata stated that the Board's recommendations should be based upon the Board's experiences in fulfilling its duties. The policy matter of whether this Board should continue should be left to the Legislature. Chair Yabuta agreed and tabled the discussion.

V. Adjournment.

Judge Barbara Richardson moved to adjourn. Second by Landon Murata. Motion unanimously carried. Meeting adjourned.

State of Hawai'i
Department of the Attorney General



REPORT ON THE LAW
ENFORCEMENT STANDARDS BOARD

Pursuant to Act 161, Session Laws of Hawaii 2016

Submitted to
The Thirty-First State Legislature
Regular Session of 2022

The Law Enforcement Officer Independent Review Board ("Board") was established by Act 161, Session Laws of Hawaii 2016, and placed for administrative purposes within the Department of the Attorney General. Act 161, which created a new part XI of chapter 28, Hawaii Revised Statutes, requires the Board to submit a report to the legislature of its findings and recommendations, including any proposed legislation.

I. The Law Enforcement Standards Board:

Pursuant to section 28-152(a), the Board is responsible for reviewing criminal investigations of incidents of officer-involved death conducted by law enforcement agencies. The Board evaluates the fairness of the investigations and issues recommendations to prosecute, decline prosecution, or conduct further investigation to the prosecuting attorney of the county in which the incident occurred. Board members serve without compensation.

II. Activities of the Board

On September 29, 2017, the Department of the Attorney General officially announced the formation of the Law Enforcement Officer Independent Review Board and its appointed original membership.

On June 19, 2018, the Board held its first meeting.

On January 23, 2019, the Board reviewed its first officer-involved death case submission, which was subsequently posted on the Board's public website.

On April 20, 2020, due to the pandemic and by virtue of the Governor's Emergency Proclamation, public agency meetings were suspended and the Board postponed further meetings. Prior to this postponement of Board meetings, only one officer-involved death case had been fully reviewed and disposed with a recommendation. The inability to conduct Board meetings due to the COVID-19 pandemic precluded further case reviews and recommendations until the Board was able to re-establish meetings virtually.

On May 11, 2021, the Board met virtually for the first time since last convening in-person on August 22, 2019. Since its May 11, 2021, the Board has aggressively scheduled monthly meetings to review case submissions which were backlogged since the COVID-19 pandemic and the Governor's Emergency Proclamation's suspension of public agency meetings.

Since August 2019, several Board members who were initially appointed have resigned, and one vacancy remains. The current Board members are:

1. Gary Yabuta (Chair) Retired Maui Police Chief
2. Barbara Richardson (Vice-Chair) Retired State Judge

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| 3. | Barbara Takase | Retired State Judge |
| 4. | John Tam | Retired Maui Prosecutor |
| 5. | Katy Chen | Goodwill Industries CEO |
| 6. | Lance Goto | Deputy Attorney General |
| 7. | Landon Murata | Deputy Attorney General |
| 8. | Bettina Ackerman | Physician |

Since May 11, 2021, the Board has conducted XX Meetings, reviewed XX officer-involved death case submissions, and accomplished the following:

XX case submissions reviewed and recommendations approved

XX written recommendations issued to prosecuting attorney

XX written recommendations published

XX officer-involved death case reviews tabled

IV. Recommended Legislation

Should the State Legislature decide to extend the implementation of the LEOIRB past the statutory sunset date of June 30, 2022, the Board respectfully provides the following recommendations to further advance its effectiveness:

1. A Board member or a former Board member who is required by the Court to appear and/or participate in a judicial proceeding involving a Board action shall be represented by the Department of the Attorney General in the judicial proceeding. This includes civil or criminal proceedings, depositions, or judicial hearings.
2. Law enforcement agencies conducting the criminal investigation of an officer-involved death shall disclose to the Board all reports, documents, and related investigative information for the Board's review, no later than 30 days from the date on which the law enforcement agency provided such information to the prosecutor. Any follow-up investigative information or material shall be simultaneously disclosed to both the Prosecutor and LEOIRB.

3. The magnitude of the operational aspects of the Board requires a fulltime Administrative Coordinator position, dedicated to the Board and under the direction of the Department of the Attorney General.